

MANAGEMENT AGREEMENT  
OF  
PHEASANT RUN CONDOMINIUM PROJECT

May THIS MANAGEMENT AGREEMENT, made and entered into this 14<sup>th</sup> day of May, 1979, by and between PHEASANT RUN CONDOMINIUM HOMEOWNERS ASSOCIATION, Inc., a Kansas Not-for Profit Corporation, hereinafter referred to as the "Association" and PHEASANT RUN COMPANY, a general partnership pursuant to the laws of Kansas, hereinafter referred to as the "Developer".

WITNESSETH:

WHEREAS, there has been previously filed and recorded with the Register of Deeds of Shawnee County, Kansas, a Declaration of Condominium with Exhibits attached by the Developer declaring that certain property located in Lot 13, in Block A, John O. Allen Subdivision No. 2 to the City of Topeka, Kansas, as being condominium property; and,

WHEREAS, in conjunction with said Declaration of Condominium, the Developer has previously caused to be created and organized a Kansas Not-for-Profit Corporation known as Pheasant Run Condominium Homeowners Association, Inc. with the corporate Charter issued by the Secretary of State dated the 14<sup>th</sup> day of May, 1979, which said Charter and Articles of Incorporation were recorded in Book Four, at Page 85, in the Office of the Register of Deeds of Shawnee County, Kansas, on the 16 day of MAY, 1979; and,

WHEREAS, that following the organization and creation of the Association and pursuant to the requirements of the Kansas Apartment Ownership Act, appropriate By Laws for said Association were attached as an Exhibit to the previously mentioned Declaration of Condominium and recorded in the Office of the Register of Deeds of Shawnee County, Kansas; and,

WHEREAS, the parties desire to enter into an appropriate Management Agreement whereby the Association delegates and contracts with the Developer for the performance of certain obligations heretofore existing and belonging to the Association in the conduct of the affairs of the Pheasant Run Condominium Project.

IT IS THEREFORE BY THE PARTIES MUTUALLY UNDERSTOOD AND AGREED for and in consideration of their mutual promises and covenants herein contained, as follows:

1. That the initial Declaration of Condominium anticipates that the Developer will cause to be constructed and offer for sale twenty-eight (28) condominium apartment units to be located in seven (7) buildings, with four (4) units in each building, on the property described in the Declaration of Condominium. Further, that the Developer will cause to be constructed certain common areas and facilities on said real estate for the common ownership and enjoyment of the apartment unit owners, their guests and invitees. Further, that said common areas and facilities will include stairwells, sidewalks, parking areas, streets and ways, swimming pool, concrete deck and cabana, among others.

2. That in addition to the property declared to be condominium property, pursuant to the Declaration hereinabove referred, the Developer did also reserve in that said document the power and authority pursuant to the Kansas Apartment Ownership Act to add 1, 2 and/or 3 additional tracts of real property as condominium property by appropriate amendment to the Declaration pursuant to the expandable condominium law contained in the Kansas Apartment Ownership Act,

and do further reserve the right to construct on said expandable property additional condominium apartment units, limited common areas and facilities. That the Association hereby designates the Developer as its exclusive managing agent for the purpose of consuming and caring out those duties of the Association hereinafter set forth. That is the intention of the parties that the Developer will assume all the responsibilities of the Association, as those responsibilities are set forth in the Declaration of Condominium, the Articles and By Laws of the Association and the provisions of the Kansas Apartment Ownership Act, except where specific reservations and exceptions are noted herein.

3. That the term of this Management Agreement will begin as of the date of the filing and recording of the Declaration of Condominium in the Office of the Register of Deeds of Shawnee County, Kansas for the Pheasant Run Condominium Project, Buildings 1, 2, 3, 4, 5, 6, and 7, irrespective of the date hereinabove set out in which this document was actually signed by the parties hereto. Further, that the term of this Agreement and the rights and obligations of the parties hereto shall continue from and after that date of recording unless terminated by the default of the parties as hereinafter provided or until three (3) years from the date of the recording of the Declaration of Condominium, whichever event shall first occur. In no event will this Agreement in its present form continue for a period longer than three (3) years from the date of the filing of the Declaration of Condominium.

4. That the following is a list of the general duties and obligations which the Developer is assuming from the Association pursuant to the provisions of this Agreement, though the listing of the same is not meant to exclude others which are not herein listed:

(a) The Developer will have the responsibility of collecting the assessments levied against the apartment unit owners, together with any other moneys due the Association pursuant to the Declaration of Condominium, Articles of Incorporation and By Laws of the Association. Further, that the Developer will have the responsibility of causing the funds so collected to be deposited with the appropriate financial institution and will maintain full and accurate records of all assessments and other moneys collected from individual apartment units and the corresponding deposit of the same to the credit of the Association.

(b) That the Developer will be responsible for taking whatever action that is permitted pursuant to the Declaration of Condominium, the Articles and By Laws, and the laws of the State of Kansas to collect from any apartment unit owner or successor any unpaid assessments or other charges levied against said unit and, further, to provide, upon request, an accounting to any inquiring party of the status of an individual apartment unit's unpaid assessments or charges.

(c) That the Developer will maintain, for and in behalf of the Association, accounting records of all of its receipts and disbursements and the carrying out of its activities and responsibilities pursuant to this Agreement in accordance with good accounting practices. That such accounting records shall include, among other records, a record of all receipts and expenditures collected or disbursed on behalf of the Association and the apartment unit owners and shall maintain separate records for each apartment unit showing the date and the amount of payment of any assessment or other charges against said apartment unit and the date and amount of any payments made by the apartment unit and the balance remaining owed.

(d) That the Developer shall be permitted to employ such personnel as it shall from time to time deem necessary in order to facilitate and enable it to carry out its responsibilities hereunder.

(e) That the Developer will, in the event of any destruction to any part of the apartment units and/or the common areas and facilities as a result of casualty loss, be responsible for evaluating such loss with the assistance of an employed architectural service, all as provided in the Declaration of Condominium. Further, that in the event of any such loss, the Developer will be responsible for notifying and making such claims as are necessary upon appropriate insurance carriers for and on behalf of the Association and the apartment unit owners. Further, that the Developer will be responsible for determining whether the damaged apartment units are occupiable following a casualty and the approval of plans for reconstruction or repair, the obtaining of estimates and the cost of such rebuilding and repair and the ordering of the rebuilding and repair and the distribution of funds received from insurance, coverage or other sources for such reconstruction or repair.

(f) That the Developer will be responsible for the procurement of appropriate insurance as the same is provided for in the Declaration of Condominium, Articles and By Laws of the Association and the laws of the State of Kansas and shall be responsible for the payment of such insurance premiums and a review of the insurance coverage and appropriate endorsements on any such policies for the benefit of all parties to be protected therein. Further, that the Developer will be responsible for seeing to the appropriate disbursement of the insurance proceeds in accordance with the Declaration of Condominium, the Articles and By Laws of the Association, and the laws of the State of Kansas; but, in no event will the Developer be allowed to redirect or alter the manner in which insurance proceeds are to be paid, other than is provided in the above-mentioned documents.

(g) That the Developer will be responsible for maintaining and causing to be repaired all common areas and facilities during the term of this Agreement to the same extent as such is required of the Association pursuant to the Declaration of Condominium as recorded. Such duties will include such items as lawnmowing, snow removal, street repair, pool maintenance, etc.

(h) That the Developer will, in addition to those duties and responsibilities hereinabove stated, from time to time have such additional duties and responsibilities as shall be delegated to it by the Association. Provided, that in no event will any such delegated duties and responsibilities include any of those hereinafter reserved to the Association or any such duties or responsibilities considered non-delegable by the Declaration of Condominium, the Articles and By Laws of the Association and the laws of the State of Kansas, as the same are now in existence or may hereafter be altered or amended.

(i) Provided, that the Developer shall not be delegated any additional responsibilities or duties by the Association without the prior written consent of the Developer.

(j) That the Developer shall be responsible for the preparation of appropriate Rules and Regulations for the conduct of the affairs of the condominium project, including the responsibilities of the apartment unit owners and the Association in regard to the use of the facilities and other matters. Provided, further, that the application and validity of said Rules and Regulations, as promulgated by the Developer, will not become effective or binding upon any apartment unit owner until the same have first been approved by the Board of Directors of the Association.

5. That the following responsibilities and duties are expressly reserved and retained by the Association and are not to be considered as delegated to the Developer, pursuant to the terms of this Management Agreement:

(a) The promulgation and making of any amendments to the Declaration of Condominium, the Articles of Incorporation or By Laws. Provided, that the Developer shall have the right to consent to any such amendments to the Declaration that would in any way influence the Developer's responsibilities hereunder. Such prior written consent of the Developer to any such proposed amendments shall be filed and recorded in the Office of the Register of Deeds along with the amendments consented to. In the absence of any such precedent consent by the Developer, any such attempted amendments shall be null and void.

(b) The fixing of the amount of assessments and the determination of what items shall be included in the assessment charges from month to month shall be the responsibility of the Association. Provided, that the Developer will provide the Association with information relative to the reasonableness of any such charges collected in relationship to the actual expenditure history of the management of the condominium project by the Developer.

(c) The Association shall not lease, mortgage, or otherwise deal with any of the common areas and facilities of the condominium project without the prior written consent of the Developer and any such attempted mortgaging or leasing, without the prior consent of the Developer, will be null and void.

(d) That the Association will not further delegate, by contract or otherwise, any of its responsibilities other than by this Agreement with the Developer, or by subsequent amendments hereto, without the prior consent of the Developer.

6. That should either the Association or the Developer fail to perform any of the duties and obligations required of either of the parties hereto, or shall they otherwise breach this agreement by doing some unauthorized act without prior consent, then the offended parties shall, by written notice to the defaulting party, notify such defaulting party of the cause or event of default and shall further give said party a period of thirty (30) days in which to correct said default. In the event that such default is not cured within the thirty (30) day period following the written notice given by the offended party, then, and in that event, the offended party may, at its sole election, declare this contract null and void and proceed to other appropriate legal remedies, or, in the alternative, the offended party may pursue a legal action for breach of contract or specific performance against the defaulting party.

7. That the Developer shall be entitled to a management fee to be paid by the Association upon such terms and conditions as the parties may from time to time agree upon. That, in addition, the Developer may at any time during the term hereof assign all or any part of its rights or obligations hereunder to any other party without the prior consent of the Association.

8. All of the terms and conditions of this Agreement shall be binding upon each of the parties and their successors in interest until the Agreement is terminated as provided for herein. This binder shall apply to any successor to the Association, in the event the Association is dissolved or its existence is otherwise terminated and upon each of the apartment unit owners, in the event that they succeed to the operation of the common area facilities as a result of the dissolution of the Association, in whatever manner. All of the terms and obligations hereunder are binding upon each of the parties and their successors and assigns to the same full degree and extent as they are themselves hereby bound. The provisions of this Agreement shall be considered as covenants running with the land and shall

be binding upon successors in interest to the apartment units and the undivided interest in the common areas and facilities, as the same may hereafter be mortgaged, leased or conveyed.

IN WITNESS WHEREOF, the parties have hereunto affixed their signatures by their lawful representatives the day and year first above written.

ASSOCIATION:

PHEASANT RUN CONDOMINIUM HOMEOWNERS ASSOCIATION, INC.

Benjamin F. Blair  
BENJAMIN F. BLAIR

Philip C. Morse  
PHILIP C. MORSE

Stanley R. Metzger  
STANLEY R. METZGER

DEVELOPER:

PHEASANT RUN COMPANY

PHIL MORSE HOMES, INC. - Partner

By Philip C. Morse  
PHILIP C. MORSE - President

Benjamin F. Blair  
BENJAMIN F. BLAIR

Stanley R. Metzger  
STANLEY R. METZGER

STATE OF KANSAS )

COUNTY OF SHAWNEE )

SS:

BE IT REMEMBERED, that on this 14 day of May, 1988, before me, the undersigned, a Notary Public in and for the County and State aforesaid, came BENJAMIN F. BLAIR, PHILIP C. MORSE and STANLEY R. METZGER, who are personally known to me to be the same persons who executed the within instrument of writing, and such persons duly acknowledged the execution of the same.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my seal, the day and year last above written.

Appointment Expires:



Pamela E. Ward  
NOTARY PUBLIC

Pamela E. Ward

Ex. H-5

Book 5 Page 193

STATE OF KANSAS )

COUNTY OF SHAWNEE )

SS:

BE IT REMEMBERED, that on this 14 day of May, 1979, before me, the undersigned, a Notary Public in and for the County and State aforesaid, came PHILIP C. MORSE, President of Phil Morse Homes, Inc., a corporation duly organized, incorporated and existing under and by virtue of the laws of the State of Kansas, and PHILIP C. MORSE is personally known to me to be such officer and he is personally known to me to be the same person who executed, as such officer, the within instrument of writing on behalf of said corporation, and such person duly acknowledged the execution of the same to be the act and deed of said corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my notarial seal, the day and year last above written.



*Pamela E. Ward*  
NOTARY PUBLIC

Pamela E. Ward

My Appointment Expires:

2-28-83

Book 5 Page 1

Ex. H-6